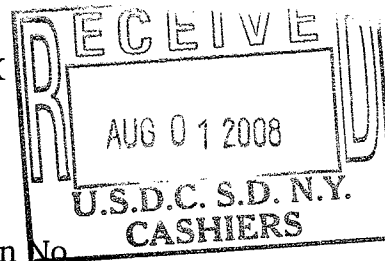


JUDGE HOLWELL

08 CV 6892

Neil Zipkin (NZ 4718)  
Benjamin Charkow (BC 4455)  
AMSTER, ROTHSTEIN & EBENSTEIN LLP  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000  
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- x  
PEM-AMERICA, INC.,

Plaintiff,

v.

TEXTILES FROM EUROPE, INC.,  
d/b/a VICTORIA CLASSICS,

Defendant.  
----- x

Civil Action No.

**COMPLAINT**

**JURY TRIAL DEMAND**

Plaintiff Pem-America, Inc. ("Pem-America") for its Complaint against Defendant Textiles From Europe, Inc. d/b/a Victoria Classics ("Victoria Classics"), alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action for copyright infringement under the Copyright Act. This is an action to redress Defendant's unfair use of Pem-America's Moroccan Spice and Spa Pastel fabric designs.

**THE PARTIES, JURISDICTION AND VENUE**

2. Plaintiff Pem-America is a corporation organized and existing under the laws of New York, residing at 230 Fifth Ave., Suite 200, New York, New York 10001.

3. Upon information and belief, Defendant Victoria Classics is a corporation organized and existing under the laws of the State of New York, having a principal place of business at 277 Fifth Avenue, New York, New York 10016.

4. Victoria Classics is transacting and doing business within this State and has committed tortious acts within this state and is subject to the jurisdiction of this Court pursuant to the laws of this state.

5. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(a).

7. This action arises under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*

#### **FACTUAL BACKGROUND**

8. Pem-America designs, manufactures and sells a variety of high quality home textile products including but not limited to quilts and comforters which generally incorporate original and distinctive designs.

9. Among the many quilts manufactured and sold by Pem-America is a collection of distinctive quilts having a fabric design that consists of a combination of fabrics of differing widths and decorative stitching that form a three-dimensional pattern. One such fabric design developed with fall colors was called Moroccan Spice. The Moroccan Spice fabric design was designed by an employee of Pem-America in the scope of the employee's employment as a work for hire.

10. The Moroccan Spice fabric design is the subject of Copyright Registration No. VA 1-635-285 which issued on July 1, 2008 and is valid and subsisting. Pem-America is the owner of the copyright in the Moroccan Spice fabric design. A copy of Copyright Registration No. VA 1-635-285 is annexed as Exhibit 1.

11. Pem-America has manufactured and offered for sale the Moroccan Spice fabric design since at least as early as December 2005 and the first sale of the fabric design was as early as March 23, 2006.

12. The Moroccan Spice fabric design is based upon an earlier work, Exotic Stripe, whose development commenced at least as early as February 2004 at the Shanghai Pem-America, Jia Li Textile Company ("Pem Jia Li") located in China.

13. Pem-America is a 50% owner of Pem Jia Li.

14. Pem Jia Li has assigned any rights it had in the Exotic Stripe fabric design to Pem-America.

15. In response to a positive reaction from the marketplace, Pem-America created a derivative work of the Moroccan Spice fabric design using Spring colors. This design was called Spa Pastel and development started in December 2006.

16. The Spa Pastel fabric design is the subject of Copyright Registration No. VA 1-635-284 which issued on July 1, 2008 and is valid and subsisting. Pem-America is the owner of the copyright in the Spa Pastel design. A copy of Copyright Registration No. VA 1-635-284 is annexed as Exhibit 2.

17. The Spa Pastel fabric design was first offered for sale at least as early as April 2007, and its first sale was on July 26, 2007.

18. Prior to August 31, 2007, Pem-America provided Linens 'n Things, Inc. ("Linens 'n Things"), a home retailer, with samples of both the Moroccan Spice and Spa Pastel fabric designs. In an August 31, 2007, e-mail, Linens 'n Things requested that Pem-America provide a quotation on the "Moroccan Spice and the Blue/Green colorway you had left with me some time ago." (Emphasis added.) The Blue/Green colorway refers to the Spa Pastel fabric design. A copy of the e-mail is attached as Exhibit 3.

19. Linens 'n Things did not purchase the Moroccan Spice or Spa Pastel fabric designs from Pem-America.

20. Recently, Pem-America representatives visited a Linens 'n Things retail outlet and saw virtually identical copies of quilts embodying the Moroccan Spice and Spa Pastel fabric designs for sale (collectively the "Infringing Products"). These products are also available for sale on the Linens 'n Things website.

21. These Infringing Products were identified on the price tags as REESE "SPICE" and "SPA BL."

22. Linens 'n Things has identified Victoria Classics as the manufacturer of the infringing products.

23. Photographs of the Moroccan Spice fabric design and the corresponding Infringing Product are attached as Exhibit 4. Photographs of the Spa Pastel fabric design and the corresponding Infringing Product are attached as Exhibit 5. Placing the photos side-by-side show that Defendant's Infringing Products are virtually identical to Pem-America's quilts embodying the Moroccan Spice and Spa Pastel fabric designs.

**COUNT I**  
**COPYRIGHT INFRINGEMENT (MOROCCAN SPICE)**

24. Plaintiff Pem-America repeats and realleges the allegations contained in the preceding paragraphs as if set forth fully herein.

25. Upon information and belief, Defendant Victoria Classics infringed the copyright on the Pem-America Moroccan Spice fabric design by copying the color selection and combination of fabrics of differing widths and decorative stitching that forms a three-dimensional pattern on the quilt.

26. Defendant Victoria Classics further infringed the copyright on the Pem-America Moroccan Spice fabric design by importing, manufacturing, offering for sale and selling the Infringing Products, and/or causing the Infringing Products to be manufactured, distributed, advertised, promoted, offered for sale.

27. The acts of Defendant Victoria Classics herein constitute violations of the exclusive rights of Pem-America under 17 U.S.C. §§ 106, 113 and 602 and constitute infringement under 17 U.S.C. § 501.

28. Pem-America has suffered and will continue to suffer damage to its business, including loss of its reputation for exclusivity for the distinctive design of Pem-America's Copyrighted Moroccan Spice fabric design, as well as loss of sales in an amount not yet known but believed to be in excess of \$500,000.

29. The continuing acts of Defendant Victoria Classics are damaging to Pem-America in a manner for which Pem-America has no adequate remedy at law.

**COUNT II**  
**COPYRIGHT INFRINGEMENT (SPA PASTEL)**

30. Plaintiff Pem-America repeats and realleges the allegations contained in paragraphs 1-23 as if set forth fully herein.

31. Upon information and belief, Defendant Victoria Classics infringed the copyright on the Pem-America Spa Pastel fabric design by copying the color selection and combination of fabrics of differing widths and decorative stitching that forms a three-dimensional pattern on the quilt.

32. Defendant Victoria Classics further infringed the copyright on the Pem-America Spa Pastel fabric design by importing, manufacturing, offering for sale and selling the Infringing Products, and/or causing the Infringing Products to be manufactured, distributed, advertised, promoted, offered for sale.

33. The acts of Defendant Victoria Classics herein constitute violations of the exclusive rights of Pem-America under 17 U.S.C. §§ 106, 113 and 602 and constitute infringement under 17 U.S.C. § 501.

34. Pem-America has suffered and will continue to suffer damage to its business, including loss of its reputation for exclusivity for the distinctive design of Pem-America's Copyrighted Spa Pastel fabric design, as well as loss of sales in an amount not yet known but believed to be in excess of \$500,000.

35. The continuing acts of Defendant Victoria Classics are damaging to Pem-America in a manner for which Pem-America has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Pem-America requests judgment against Defendant Victoria Classics as follows:

I. That a preliminary and permanent injunction be issued enjoining Defendant Victoria Classics and its agents, servants, employees and attorneys and those persons in active concert or participation with them from:

A. manufacturing, reproducing, displaying, publishing, vending, distributing, selling, promoting, importing, and/or advertising, assisting, inducing, or contributing to the manufacturing, reproducing, displaying, publishing, vending, distributing, selling, promoting, and/or advertising any product that contains substantial material copied from and substantially similar to the copyrighted Moroccan Spice and Spa Pastel fabric designs, including without limitation the infringing products depicted in Exhibits 4 and 5; and

B. otherwise infringing the copyrights in Pem-America's Moroccan Spice and Spa Pastel fabric designs, namely the copyrights represented by Copyright Registrations No. VA 1-635-285 and VA 1-635-284.

II. During the pendency of this lawsuit Defendant Victoria Classics be required to deliver to Pem-America for storage or destruction all copies of the infringing products on hand or in inventory.

III. Defendant Victoria Classics be required to recall all copies of the infringing products it has sold to its customers that are still within the inventories of those customers.

IV. Defendant Victoria Classics be required to pay to Pem-America such actual damages as Pem-America sustained in consequence of the infringement by Defendant Victoria Classics of Pem-America's Moroccan Spice and Spa Pastel fabrics designs and to account for all gains, profits and advantages, with full costs.

V. Pem-America have such other and further relief as the Court may deem just and proper.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Plaintiffs  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000

By: 

Neil Zipkin (NZ 4718)

Benjamin Charkow (BC 4455)

Dated: New York, New York  
August 1, 2008



**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand trial by jury on all issues triable by right of jury in this action.

# EXHIBIT 1

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

1 0001 0001  
\* \*

**Registration Number:**

**VA 1-635-285**

**Effective date of  
registration:**

**July 1, 2008**

## Title

**Title of Work:** Moroccan Spice  
**Previous or Alternative Title:** PJ4201  
**Nature of Work:** Fabric design of differing widths with decorative stitching

## Completion/Publication

**Year of Completion:** 2005  
**Date of 1st Publication:** December 12, 2005  
**Nation of 1st Publication:** United States

## Author

**Author:** PEM-AMERICA, INC  
**Author Created:** 2-Dimensional artwork  
**Work made for hire:** Yes  
**Citizen of:** United States  
**Anonymous:** No  
**Pseudonymous:** No

## Copyright claimant

**Copyright Claimant:** PEM-AMERICA, INC  
230 Fifth Avenue, New York, NY, 10001

## Limitation of copyright claim

**Material excluded from this claim:** Prior fabric design  
**Previously registered:** No  
**New material included in claim:** Additional artistic work

## Certification

**Name:** Benjamin Charkow  
**Date:** June 26, 2008

**IPN#:****\*\*****Registration #** VA0001635285**Service Request #:** 1-74137544

Amster Rothstein & Ebenstein LLP  
Benjamin Charkow  
90 Park Avenue  
New York, NY 10016

## EXHIBIT 2



## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

1001/000  
\* \*

Registration Number

VA 1-635-284

Effective date of  
registration:

July 1, 2008

### Title

Title of Work: Spa Pastel  
Previous or Alternative Title PJ5626  
Nature of Work: Fabric design of differing widths with decorative stitching

### Completion/Publication

Year of Completion: 2007  
Date of 1st Publication: April 24, 2007  
Nation of 1st Publication: United States

### Author

Author: PEM-AMERICA, INC  
Author Created: 2-Dimensional artwork  
Work made for hire: Yes  
Citizen of: United States  
Anonymous: No  
Pseudonymous: No

### Copyright claimant

Copyright Claimant: PEM-AMERICA, INC  
230 Fifth Avenue, New York, NY, 10001

### Limitation of copyright claim

Material excluded from this claim: Prior fabric design - Moroccan Spice (PJ4201) being concurrently submitted for registration

Previously registered: No

New material included in claim: Additional artistic work

### Certification

IPN#:



Registration # VA0001635284

Service Request #: 1-74137575

Amster Rothstein & Ebenstein LLP  
Benjamin Charkow, Esq  
90 Park Avenue  
New York, NY 10016

## EXHIBIT 3



**beverly chapman**

**From:** Rood, Sarah [SRood@Int.com]  
**Sent:** Friday, August 31, 2007 10:31 AM  
**To:** beverly chapman  
**Subject:** QRE: Pem Update,  
**Importance:** High  
**Attachments:** Urban Living Coverlet Set Pricing Grid.xls

Beverly,

Hope all is well. I was hoping that you could please quote on the Moroccan Spice BIAB as a Coverlet set for us in F/Q and King only. We would like Poly Fill and Poly reverse (based on hand sample approval) to help reduce costs. I have attached our spec sheet and target DEAD NET costs.

We would like to have this in 2 colorways - Same as Moroccan Spice and the Blue/Green colorway you had left with me sometime ago.

Please quote DEAD NET REPLENISHMENT costs, which means DO NOT include the following: Freight, Damages, Accrual, OOD/RTV, Packaging.

We are actually working on this quickly and need an answer no later than next Wednesday morning.

Please advise and let me know if you have any questions.

Thanks.  
Sarah

---

**From:** beverly.chapman@pemamerica.com [mailto:beverly.chapman@pemamerica.com]  
**Sent:** Tuesday, August 14, 2007 10:35 AM  
**To:** Rood, Sarah  
**Subject:** RE: Pem Update,

Dear Sarah, I'm sorry you were not able to make in this week, I know your schedule was super tight. We had a surprise guest actually, Scott Silver came in with Ilona Nagy and Violet?? to review our bath line and asked me if you and I were I contact with each other. I did tell him you mentioned that you would try and fit us in your schedule for last week, I think that because of what we're doing with Aaron and hopefully bath, Scots feeling is we should expand further. With that being said, can I make an appointment to come out and see you the week of the 27<sup>th</sup> of August?? sometime I would like to review with you the "new" Retro Chic items that would do well for you, and would not be a conflict with your partners across the pond. Please let me know a good day and time.

Hope your market went well and was successful?

Best regards,  
Beverly..

**Beverly Chapman**  
**Pem America**  
**230 Fifth Avenue, Suite 200**  
**New York, NY 10001**  
**Tel: 212-481-2141 x 273**

8/31/2007

**Fax: 212-481-2241**  
**Cell: 347-581-4835**

---

**From:** Rood, Sarah [mailto:SRood@Int.com]  
**Sent:** Tuesday, July 24, 2007 11:05 AM  
**To:** beverly chapman  
**Subject:** RE: Pem Update,

Beverly,

Our market schedule is booked as of now, but I will take down your number and address and call you if we are running early at any of our appointments. Many of the projects we have been working on how been completed and we are now working on late Spring 2008.

Talk to you soon,  
Sarah

---

**From:** beverly.chapman@pemamerica.com [mailto:beverly.chapman@pemamerica.com]  
**Sent:** Friday, July 13, 2007 11:42 AM  
**To:** Rood, Sarah  
**Subject:** Pem Update,

Hi Sara, I apologize for not being in contact, over the past couple of weeks, we have been going through the motions of being set up as a Vendor with LNT. Its been a very difficult process, going back and forth, and to be honest with the terms etc, I wasn't sure that it was going to work out, I did not want to waste your time or mine for that matter if it didn't. Thankfully all letters and terms have been okayed, and now only EDI has to be set up. With that being said, I feel more comfortable now, being able to proceed with where we left off if that's okay with you, I also, would like to have you come visit us at market if your schedule permits. Please let me know if you can make it in, we would love to see you.

Thanks Beverly.

Beverly Chapman  
Pem America  
230 Fifth Avenue, Suite 200  
New York, NY 10001  
Tel: 212-481-2141 x 273  
Fax: 212-481-2241  
Cell: 347-581-4835

---

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure, dissemination of or reliance upon this communication by persons other than the intended recipient may be subject to legal restriction or sanction. If you think that you have received this E-mail message in error, please reply to the sender and delete this email promptly.

---

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure, dissemination of or reliance upon this communication by persons other than the intended recipient may be subject to legal restriction or sanction. If you think that you have received this E-mail message in error, please reply to the sender and delete this email promptly.

8/31/2007

## EXHIBIT 4





Victoria Classics Accused Design

## EXHIBIT 5





Pem-America Spa Pastel



Victoria Classics Accused Design